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BILL OF ATTAINDER BY JUDICIAL DECREE, UNDER THE COMMERCE CLAUSE.

An esteemed contributor favored us with an article which was published in 73 Cent. L. J. 297, under the title of "Is the United States Judiciary Powerless to Hurt the Business of a Trust?"

Our contributor's answer to his own query was that "the public can secure perfect protection" by injunction indefinitely retained as to any combination brought into court and punishing it and its officers "in whatever way is necessary to compel them to obey the court's decree honestly and loyally."

While this might be sufficient in some instances, it yet might not in other, and especially it would appear to be very inadequate, if a combination, the necessary effect of whose existence is in restraint or monopolization of trade, were allowed to continue. Injunction orders in such a case would be like pellets against an armor of steel, because automatically a contrary result would arise from the combination itself.

But our contributor alleges, that to dissolve such a combination is to construe the Sherman act like a bill of attainder and, therefore, to place upon its face the brand of unconstitutionality.

To us what the Chief Justice says about this in the Standard Oil and Tobacco Trust decisions is the most conclusive parts of his opinions.

Thus take from the former of these opinions this language: "It may be conceded that ordinarily where it was found that acts had been done in violation of the statute, adequate measures of relief would result from restraining the doing of such acts in the future. Swift & Co. v. United States, 196 U. S. 375. But where the condition which has been brought about in violation of the statute, in and of itself is not only a continued attempt to monopolize, but also a monopolization, the duty to enforce the statute requires the application of broader and more controlling remedies. As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies two-fold in character becomes essential: 1st. To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. 2nd. The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about."

In this extract it seems to us that the Chief Justice clearly recognizes, that a situation lawfully created or achieved cannot be destroyed by judicial decree, however great may be its potency for evil, though that potency be misdirected to an end. They are all instruments of evil, and, in a restricted sense, *deodands* of the law.

In such case the statute can only touch the acts towards that end and injunctive relief or penal visitation may be appropriate accordingly as future or past acts are up for consideration.

But when the creation of a situation is itself unlawful, then that situation is no more immune from attack or suppression by law where it has a pecuniary value annexed to or inherent in it, than where it has not such.

To such a situation the principle of *confusio bonorum* has no application. If either, any or all the goods may be affected by

destruction of the situation, none stand like innocent goods, if we may use such an expression, becase they are joint agencies in furthering violation of law in the maintaining of that, which is an active factor to an end.

Furthermore, to destroy that situation takes away nothing from property of estimable value, but rather the doing so is in legal contemplation the enhancement in value of that property, because the law cannot regard it of value to property, that it may be multiplied through criminality, but it is benefitted by being rescued from its association.

Just as it is *damnum absque injuria*, even if there is any *damnum* at all, for one to be prohibited from doing an unlawful act, so also is it thus, if a criminal enterprise or situation is destroyed, though in the markets of the world or at the assessor's office a pecuniary loss may be deemed to have resulted.

To create a situation that is to operate in and of itself as a restraint of trade is like the establishment of a lawful business in a neighborhood where it is a nuisance. The doctrine of *sic utere tuo ut alienum non laedas* never was supposed to have any kinship to confiscation or attainder, because it is not property in itself that works injury, but the relation created to that which is around it.

Our contributor's article seems plausible in many aspects, but the double method of relief indicated by the Chief Justice would seem necessary, if the courts are to have any power worthy of the name under the anti-trust act.

If only one method were to be resorted to, as claimed by our contributor, the next step would be to assert, that, as the combination is lawful, its owners ought to be permitted to employ it in that reasonable way inherent in property by constitutional right. To agree to that would be to wipe out the Sherman law, lock, stock and barrel.

NOTES OF IMPORTANT DECISIONS

INSURANCE—WAIVER OF THE DEFENSE OF SUICIDE.—By Georgia statute it is provided that: "Death by suicide * * * releases the insurer from the obligation of his contract." A policy in the case of Mutual Life Ins. Co. v. Durden, 72 S. E. 295, contained the clause that: "The company shall not be liable hereunder in the event of the insured's death by his own act, whether sane or insane, during the period of one year after the issuance of the policy." Suicide was established in the case beyond the possibility of controversy, but it occurred after the year. The majority of Georgia Court of Appeals held that the statute merely expressed a defense in favor of an insurer, which could be waived.

The opinion of the dissenting judge thought the statute proclaimed a policy, just as if it had said the insurance should be absolutely void. The dissent also took the view, that, even had the legislature not spoken upon the subject, it would be against sound public policy to permit of waivers of this nature, planting itself on the opinion of the late Justice Harlan in the case of Ritter v. Mutual L. Ins. Co., 169 U. S. 139.

This is certainly a subject on which the state might and ought to announce a public policy and it seems to us, that the statute should have been given the force and effect the dissenting judge claims for it.

The majority speaks of the impolicy of interfering with freedom of contract, but when that trenches upon the domain of morality, in causing an insured to violate the expectation and intent of both parties to a contract at the time it is entered into, it is not really interfering with freedom of contract at all. The insured is not keeping his part of the contract when he hastens his death, and it certainly seems against public policy for the insurer to tell an insured that, if he wishes to kill himself, his policy shall be valid.

HUMANITY AND THE LAW.

Is human kindliness a duty in the eyes of the law? Are we our brothers' keepers? Are the ethics of Christianity a part of the law of the land? Does social progress require the legal sanction and protection of the altruistic and of the humane? To what extent should the public policy of the courts (for it is a judicial conception of a public policy which is behind almost all tort liability), recognize and keep abreast of our higher impulses and conceptions and express in the mandates of the law the concepts of a Christian civilization?

These questions have recently been presented in the three cases of Union Pacific Railway Co. v. Cappier,[1] Depue v. Flateau, et al.,[2] and Cincinnati and N. O. and T. P. R. Co. v. Marr's Administratrix,[3] and should be squarely met and settled. The first of the cases arose in the state of Kansas. A trespasser on a railway right of way was struck by a moving car, without fault on the part of the railroad company, and was left by the side of the track in a mutilated and bleeding condition, without any attempt being made to bind up his wounds or to check the flow of blood. Death ensued as the joint result of the injury and of the exposure. In reversing a judgment for the mother of the deceased, the court, among other things, said:

"These facts bring us to a consideration of the legal duty of these employees toward the injured man after his condition became known. Counsel for the defendant quote the language found in Beach on Contributory Negligence,[4] as follows: 'Under certain circumstances, the railroad may owe a duty to a trespasser after the injury. When a trespasser has been run down, it is the plain duty of the railway company to render whatever service is possible to mitigate the severity of the injury. The train that has occasioned the harm must be stopped, and the injured person looked after, and, when it seems necessary, removed to a place of safety, and carefully nursed, until other relief can be brought to the disabled person.' The principal authority cited in support of this doctrine is Northern C. R. Co. v. State.[5] * * * * The case does not support what is so broadly stated in 'Beach on Contributory Negligence.' It is cited by Judge Cooley, in his work on Torts, in a note to a chapter devoted to the Negligence of Bailees,[6] indicating that the learned author understood the reasoning of the decision to apply where the duty began *after* the railway employees *had taken charge* of the injured person. After the trespasser on the track of a railway company has been injured in collision with a train, and the servants of the company *have assumed to take charge of him*, the duty arises to exercise such care in his treatment as the circumstances will allow. We are unable, however, to approve the doctrine that when the acts of a trespasser himself result in his injury, where his own negligent conduct is alone the cause, those in charge of the instrument which inflicted the hurt, being innocent of wrongdoing, are nevertheless blamable in law if they neglect to administer to the sufferings of him whose wounds we might say were self-imposed. With the humane side of the question courts are not concerned. It is the omission or negligent discharge of legal duties only which come within the sphere of judicial cognizance.[7] For withholding relief from the suffering, for failure to respond to the calls of worthy charity, or for faltering in the bestowment of brotherly love on the unfortunate, penalties are found not in the laws of men, but in that higher law, the violation of which is condemned by the voice of conscience, whose sentence of punishment for the recreant act is swift and sure. In the law of contracts it is now well understood that a promise founded on a moral obligation will not be enforced by the courts. Bishop states that some of the older authorities recognize moral obliga-

(1) 66 Kan. 649; 69 L. R. A. 513.
(2) 111 N. W. 1. (Minn.)
(3) 70 L. R. A. 291. (Ky.)
(4) 3rd Ed. Sec. 215.
(5) 29 Md. 420; 96 Am. Dec. 545.
(6) Ch. 20.
(7) See Barrows on Negligence, p. 4.

tion as valid, and says: 'Such a doctrine carried to its legitimate results would release the tribunals from the duty to administer the law of the land, and put in the place of law the varying ideas of morals which the changing incumbents of the bench might from time to time entertain.'[8]

* * * * * * * The moral law would obligate an attempt to rescue a person in a perilous position, as a drowning child—but the law of the land does not require it, no matter how little personal risk it might involve, provided that the person who declines to act is not responsible for the peril."[9]

The second case, that of Depue v. Flateau et al., was tried in Minnesota. The plaintiff was a cattle buyer. He called at the farm of the defendants at about five o'clock in the evening of a very cold January day to inspect some cattle he understood they had for sale. It was dark when he arrived and he was unable to inspect the animals and he therefore requested permission to remain overnight. This request was refused, but the defendant Flateau, Sr., invited him to remain for supper. Soon thereafter he was taken violently ill and fell to the floor. From this point his memory was not clear as to what occurred, but he recalled that he again requested permission to remain at defendants' home over night and that his request was refused. Defendants then assisted him from the house and into his cutter and started him on his journey home, seven miles away. He was found next morning, about three-quarters of a mile from defendants' house nearly frozen to death, having been again attacked by his ailment and having fallen from his cutter. He subsequently brought an action against defendants for damages, claiming that, "in view of his physical condition, which was known to defendants, they were guilty of negligence in sending him out unattended on a cold night to make his way to his home as best he could." This theory the court sustained. It held that "since the plaintiff was not a trespasser upon the premises of defendants, but was there by express invitation, the defendants owed him the duty, upon discovering his physical condition, to exercise reasonable care in their own conduct not to expose him to danger by sending him out from their home, and that, if defendants knew and appreciated his physical condition, their conduct amounted to negligence, and the question of their liability should have been submitted to the jury." "The case is an unusual one on its facts," the court said, "and all four precedents are difficult to find in the books. In fact, after considerable research, we have found no case where facts are identical with those at bar. It is insisted by defendants that they owed plaintiff no duty to entertain him during the night in question, and were not guilty of any negligent misconduct in refusing him accommodations, or in sending him home under the circumstances disclosed. Reliance is had for support of this contention upon the general rule as stated in Union Pacific Ry. Co. v. Cappier,[10] where the court said: 'Those duties which are dictated merely by good morals or by humane considerations are not within the domain of the law. Feelings of kindness and sympathy may move the Good Samaritan to minister to the sick and wounded at the roadside, but the law imposes no such obligation; and suffering humanity has no legal complaint against those who pass by on the other side * * * * * * Unless a relation exists between the sick, helpless, or injured and those who witness their distress, of a nature to require and impose upon them the duty of providing necessary relief, there is neither legal obligation to minister on the one hand, nor cause for legal complaint on the other.' This is no doubt a correct statement of the general rule applicable to the Good Samaritan, but it by no means controls a case like that at bar. The facts of this case bring it within the more comprehensive principles that

(8) Bishop on Contracts, Sec. 44.
(9) Cites Kenney v. Hannibal & St. J. R. Co., 70 Mo. 252-257.

(10) 66 Kan. 649, 72 Pac. 281; 69 L. R. A. 513.

whenever a person is placed in such a position with regard to another that it is obvious that, if he does not use due care in his own conduct, he will cause injury to that person, the duty at once arises to exercise care commensurate with the situation in which he thus finds himself, and with which he is confronted, to avoid such danger; and a negligent failure to perform the duty renders him liable for the consequences of his neglect. * * * * * * Those entering the premises of another by invitation are entitled to a higher degree of care than those who are present by mere sufferance. * * * * * In the case at bar defendants were under no contract obligation to minister to plaintiff in his distress; but humanity demanded that they do so, if they understood and appreciated his condition. And, though those acts which humanity demands are not always legal obligations, the rule to which we have adverted applied to the relation existing between these parties on this occasion and protected plaintiff from acts at their hands that would expose him to personal harm. He was not a trespasser upon their premises, but, on the contrary, was there by the express invitation of Flateau, Sr. He was taken suddenly ill while their guest, and the law, as well as humanity, required that he be not exposed in his helpless condition to the merciless elements.[11] The case, in its substantial facts, is not unlike that of Railway Co. v. Marrs.[12] * * * * * * The case at bar is much stronger, for here plaintiff was not intoxicated, nor a trespasser, but, on the contrary, was in defendants' house as their guest, and was there taken ill in their presence, and, if his physical condition was known and appreciated, they must have known that to compel him to leave their home unattended would expose him to serious danger."

In the case of Cincinnati, N. O. and T. P. R. Co. v. Marrs' Administratrix, to which the Minnesota court referred, William H. Marrs, while in an intoxicated condition wandered into the private switching yards of the Cincinnati, New Orleans and Texas Pacific Railway Company at Lexington, Ky., and at 11 o'clock in the evening, was found by the yardmaster asleep in the labyrinth of tracks. A switching crew coming along with an engine at the time, he was aroused by the crew and the yardmaster and told to move along. This he did, cursing his disturbers as he walked into the darkness. The crew then went to their supper (a midnight lunch), and, returning in an hour, started with their engine along one of the tracks for the purpose of getting a car of stock. While proceeding at the rate of six or seven miles an hour, the engine ran over Marrs, who had again fallen asleep (this time on the track), and inflicted injuries from which he died. To recover damages for the death thus occasioned, an action was successfully prosecuted by the administratrix of the estate of the deceased man, and the judgment which was recovered was affirmed by the Supreme Court of the State of Kentucky, to which an appeal was taken. "We fully concede," the court said, "that Marrs' being drunk did not make him any the less a trespasser when he first went into the yard of the corporation, and his intoxication added no new duty from it to him then. But when its servants actually discovered him, trespasser though he was, they owed him the duty to refrain from injuring him, and this duty was as comprehensive as the helplessness of his condition demanded to insure his safety from injury by them. The servants of the corporation, after finding him in the yard, could not shut their eyes and close their faculties to what must have been apparent to the most casual observer, and say that, under the circumstances surrounding Marrs, they owed him no duty, and could after that treat him as a trespasser. They knew he was intoxicated and in the yard, and, having seen him twice before within an hour in a drunken stupor, they had no right to assume that when left to himself he would not again sink into a torpor, as he had done twice before. * * * * * * This being true they owed him one of two alternative duties—either to see him safely out of the yard, which common humanity required, or, failing in this, watch out for

(11) Cites 21 Amer. & Eng. Ency. Law, 471; Barrows on Negligence, 4; Barrows on Negligence, 304; 2 Thompson on Negligence, 1702; Heaven v. Pender, 11 L. Q. B. Div. 496; Note to Railway Co. v. Cappler, 69 L. R. A. 513.

(12) 27 Ky. Law Rep. 388, 88 S. W. 188; 70 L. R. A. 291. See also Haug v. Railway Co., 8 N. Dak. 23.

him as the engine moved about in the corporation's business."[13]

In this last case there was no invitation and the injured man was a trespasser. It is to be noticed, however, that the employees of the railway company awakened and perhaps to that extent took him under their care. It is also to be noticed that the decision turns rather upon the alleged subsequent negligence of operating the engine in the yard when the switching crew knew or should have known that Marrs was wandering around therein, than on the failure to see him safely out of his dangerous position when he was first discovered and awakened. The analogy, therefore, which the court in the Flateau case, to which we have just referred, saw between this case and the one under its immediate consideration, is not perhaps as clear to others as it was to the Minnesota tribunal. In the Marrs case there was a sin of commission as well as one of omission. In the Flateau case there was a sin of omission alone. In the Marrs case the employees of the railroad company, so the court held, negligently ran over the man rather than negligently failed to see him in safety from the yards. In the Flateau case the defendant did no affirmative physical act of which complaint could be made or on which an action of tort could be based. He merely denied the permission to stay with him overnight. There was no force and no violence. There was a verbal refusal of a verbal request and that was all. The Flateau case, indeed, is perhaps the first case to be found in the books in which the law of humanity and not of strict legal personal and property right prevails, and where a liability in damages is imposed for what was primarily a sin of omission rather than a sin of commission. The defendant, indeed, was held liable not because he did those things which he "ought not to have done," but because he "left undone those things which he ought to have done."

But neither the Flateau case nor the Marrs case can be reconciled with the strict rules of the past, which merely imposed a legal obligation for a negligent affirmative injury to personal or property rights. In both cases humanity was the impelling argument. In the Marrs case it is plain that the negligence in operating the train—the sin of omission—was merely an excuse for the judgment. The accident, indeed, happened an hour at least after the man had first been awakened. The engine crew had gone to supper in the interim. They could hardly have been expected to know that he was still in the yards. The judgment was really rendered because of the omission to lead the drunken man, when first awakened, from the labyrinth of tracks and to a place of safety. Nor can we believe that it was based upon the theory that the employees of the company, having once awakened the man, had assumed a responsibility to him and were bound to finish this work which they had begun and to incur a liability which they would not have incurred if they had let him alone. The fact was that, though a trespasser, he was in a position of danger from which, without danger or a serious loss to themselves, they could have extricated him, and the court, precedent or no precedent, was determined to hold them liable. The positive act, we believe, furnished an excuse for, rather than the reason and purpose of the decision.

The subtle distinctions which are drawn in all of these cases, indeed, must sooner or later be swept aside, and this both because the public as a whole has no respect for or interest in "nice questions," and because there is no merit or reason in them. The attempt which was made in the opinions in the Cappier case to draw a distinction between those cases in which the defendant has entered upon the care of the injured person and negligently performed his work or desisted therefrom, and those in which he has refrained from aiding altogether, and to hold to a rule of liability in the former and not in the latter, is too opposed to a sound policy to merit any approval whatever. The result of the distinction would be to suppress all the instincts of humanity. It would prevent men, no matter how serious the catastrophe or great the necessity for help, from volunteering any assistance at all for fear that having once begun they could not afterwards desist. It renders one liable for negligence committed while acting humanely. It subjects one to no liability whatever if he allows the cowardly and selfish side of his nature to dominate him and refrains from helping altogether. In an age of legal refinement and of a super-imposed law, such distinctions may perhaps be made and may live. They are out of place and impossible

(13) Cites Fagg v. Louisville & N. R. Co., 111 Ky. 30; 63 S. W. 580; 54 L. R. A. 919, and distinguishes Brown v. Louisville & N. R. Co., 103 Ky. 211; 48 S. W. 648 and Virginia Midland R. Co. v. Boswell, 82 Va. 932, 7 S. E. 383.

in an age of democracy in which the judge and the law-maker are every day finding it more and more necessary to keep in touch with, and to respond to, the ethical and social demands of an idealistic, aggressive and thinking constituency. So, too, the same sentiments which in the ages of the past led men to forcibly deal with the heartless recreant and the coward, will never in this day, where force and personal persuasion must give way to the law, allow that law to sanction heartlessness, and to absolve a man from the duty of rendering at least the first aids to those whom he has injured, even though he may not be legally liable for the injury itself.

One thing is certain, and that is, that the law of negligence and of tort liability has been, and always will be, progressive. It has in the past, it is true, been, and perhaps always will be, largely judge-made. It has in the past hardly been popular in its origin. It has, however, though king and judge-made, largely reflected the social conscience of the king and of the judge. Though circumscribed by formalism it has had its origin and expansion in a policy of democracy and of humanity. As our democracy and humanity grow, that expansion will continue.

It is interesting, indeed, and profitable, to trace the gradual growth of the law of negligence in this respect and of the public policy which lies beneath it. The English law at first gave no general redress for negligence. That negligence was only actionable which was expressed in a direct and forcible tort and whose results were direct and proximate. There was no redress for the indirect results, even of forcible torts, nor was there any redress for the sins of omission. It was not until the reign of Edward III. that the action of trespass on the case was invented or created and that the law of actionable negligence really began to exist. With the invention of that writ a new right was created, the right to a relief in damages for injuries sustained through the failure of another, on whom the duty of care and protection was imposed, to perform that duty whether the negligence consisted in omission or commission. But there were questions even then to be settled and which are still largely unsolved. These questions are: "On whom is the duty of care and protection imposed," and "What are our real duties?" "Are we to any, and if so, to what extent, our brothers' keepers?" These questions must be fairly and squarely met. Do we, or do we not, owe to our fellowman the duty of help and of protection in periods of dire distress when that assistance is easily within our power? Is there aught of Christianity in the law of the land?

Closely connected with the cases we have considered are those in which railway companies and manufacturers have been sought to be held liable for the value of the services of surgeons and of others which have been furnished persons whom they have injured, and it should be incumbent on the companies to procure such services. These cases on the whole point strongly to a new gospel of humanity. Their tendency is to make one believe that the law of negligence and the test of tort liability is to-day, as it always has been, progressive and is the expression of a growing judicial conscience, a conscience, it is true, which is limited by considerations of practicality and which is too regardful of precedents, but which is a conscience nevertheless.

"An implied power," says Judge Thompson in his "Commentaries on the Law of Corporations,[14] "will be ascribed to any corporation employing labor to incur expenses on account of injuries received by its employees in the line of their employment in the absence of any express statutory grant of such power. This implication rests upon the most obvious grounds of justice and humanity." "The principles of justice and the dictates of humanity, in our judgment, as well as the law," says the Texas Court of Appeals,[15] "in a case where contributory, if not proximate and controlling negligence could be attributed to the injured man," "imposed upon the company the duty to furnish the wounded man medical aid; and the foreman acting for it, in the absence of any higher authority, had the implied power to bind the company for the payment of the services of the physicians whom he had employed." Where, indeed, employees are injured the courts seem generally willing to clothe even subordinate officers and agents with the authority to summon and contract for medical aid, where that aid is immediately necessary.[16] The opinions which so far have refused to extend the

(14) Sec. 5840.

(15) Texas Bldg. Co. v. Drs. Albert and Edgar, Nov. 24, 1909. Rehearing, Jan. 5, 1910. C. L. J., vol. 70, No. 6, p. 118.

(16) The general rule seems to merely require that the officer contracting be the high-

doctrine of liability and of implied authority from the railroad cases in which, on account of the well-known dangers of the occupation, it was first asserted, to those connected with other industries, and the few railway cases which themselves deny the liability and the power, can generally be distinguished by the fact that in them liability is sought to be imposed for continuous as well as for immediate and temporary treatment. "In the first case," says the Supreme Court of Kentucky,[17] "the services sued for were not confined to the immediate emergency, but lasted during several months. Appellee in the meantime resided in the same city and only a short distance from where appellant lived, and it would have been very easy for him to have inquired as to the alleged authority of their foreman to act for them. * * * * * In this case no necessity is shown why appellee should have selected a physician to treat the injured man during his long confinement, as it does not appear that he lacked friends or relatives, who were both able and willing to do so for him."

There is, of course, much reason and justice behind this protest against liability for services rendered during an extended period of time. Except in the case of employees, and on a theory of employers' liability and risk of the business, there can indeed, be no reason why the railway company or manufacturer or other defendant should, when the accident was not in the first place due to his negligence, pay for any medical or other services at all, except such other services as may be immediately necessary to save life or to prevent immediate suffering.[18] The officer who calls the physician is as much the agent by necessity of the injured and unconscious man as he is of the railroad or other company. "Ordinarily," the courts say, "one running and calling a physician does not make himself liable, because a contrary rule would make a bystander hesitate to perform such an act

est representative of the company within reasonable reach or present at the scene of the accident. Elliott on Railroads, Sec. 222; Clark and Skyles on Agency, Sec. 62; Langan v. Great Western R. Co., 30 L. T. (n. s.) 173 (overruling Cox v. Midland Counties R. Co., 3 Exch. 268 (1849); Levier v. R. Co., 92 Ala. 258, 9 So. 405; Terre Haute Ry. Co. v. McMurray, 98 Ind. 358, Louisville, etc., R. Co. v. Smith, 121 Ind. 353; 6 L. R. A. 320.

(17) Godshaw v. Struck & Bro., 109 Ky. 285, 51 L. R. A. 668, 58 S. W. 781. See also Holmes v. McAlister, 123 Mich. 493; Meisenbach v. Cooperage Co., 45 Mo. App. 232.

(18) The rule of law, if rule it be, seems to have at first arisen from the peculiarly dangerous nature of railroad employment and perhaps the publicity attending railway accidents, and its extension to other employments has been firmly resisted. "Railway companies," says the Indiana Court of Appeals, "occupy a peculiar position with reference to such matters. Exercising quasi public functions, clothed with extraordinary privileges, carrying their employees necessarily to places remote from their homes, subjecting them to unusual hazards and dangers the law has, by reason of the dictates of humanity and the necessities of the occasion, imposed on such companies the duty of providing for the immediate and absolutely essential needs of injured employees when there is a pressing emergency calling for their immediate action. In such cases, even subordinate officers are sometimes, for the time being, clothed with the powers of the corporation for the purposes of the immediate emergency and no longer." Chaplin v. Freeland, 7 Ind. App. 678, 34 N. E. 1007.

On the question of the obligation of the general employer the Supreme Court of Michigan in the case of Holmes v. McAlister, 123 Mich. 493; 82 N. W. 220; 48 L. R. A. 396, says: "An employee in a bank, store, or shop or upon a farm, may become suddenly very ill, or in some way seriously injured, so that some foreman or other employee might properly deem immediate medical attendance necessary and, in the absence of the employer, summon a physician. Is the employer liable. We are cited to no authority which so holds. It is doubtful whether such employer would be liable if he himself sent for the physician to attend one of his employees. It is unnecessary, upon this point to express an opinion. We do not hesitate, however, to hold, that, in those avocations of life unaccompanied by dangers, an employer is not liable for the services of a physician summoned by his manager, foreman or other servant to attend an employee in a case of sudden illness or injury, whatever his moral obligations may be."

But the contrary rule seems for a long time to have been generally followed in the courts of admiralty, and will as time goes on, in so far as employees and invited guests are concerned, be extended to all dangerous places and employments. Texas Bldg Co. v. Drs. Albert and Edgar, Tex. Ct. App., 70 Central Law Journal, No. 6, p. 118. There is quite a difference, indeed, between a voluntary relationship such as that of a bystander at a street accident and between accidents occurring in the ordinary employments and in those which occur in places and in employments which are essentially dangerous. In these cases the courts may well have, and generally seem to have, implied a contract, just as they have in regard to the proper treatment of passengers by railroad employees and in regard to their freedom from insult, and that is the contract in case of sudden accident and sudden emergency to furnish them at their own expense any medical and other attendance immediately necessary no matter from what cause the accident occurs. It is really a medical attendance and accident protective insurance and is made necessary by the public policy which seeks not merely to protect the citizens of the state, but to promote the feelings of humanity and common kinship which are the foundations of all society.

of humanity."[19] We would even go so far as to say that in such cases the physician should be compelled to at least temporarily minister and to run the risk of his patient's ability to compensate him for his services. There is, except on the theory of a judge-made employers' liability law, or of an implied risk of the business in the case of those businesses and employments which, like railroading, are both quasi public and intrinsically dangerous, no more reason why the company should pay gratuities than that the physician or surgeon should furnish them. The doctor, like the railroad company, is a licensee. His business is affected with a public interest. The lawyer can, under the pain of disbarment, be compelled to gratuitously defend the pauper criminal. Why, in extreme cases, should not the nearby physician be placed under the same obligations?

All other services, however, which are immediately necessary, the injuring party should furnish, no matter how free from blame he may be, and especially should this be the case with employers and quasi public corporations, and theoretically at least, with all corporations. There can, indeed, be but little question that the duty to furnish employees with reasonably safe appliances and tools and premises on which and with which to work, and to give warning of hidden and unexpected dangers, which was itself judge-made, will sooner or later be extended to that of furnishing the immediate relief which the emergency requires. It is, in short, a species of employers' liability insurance which the morals of the age will not suffer to be withheld. The public will, of course, pay the bill in the increased price of the articles they buy and of transportation, but they will no less insist upon the rule. It is not strictly logical, to be sure, nor is it consistent with the theory of a complete contractual equality between employer and employee to which the American courts have for so long adhered, and in which as a people we like to believe, but it is humane, and the courts are coming more and more to believe that in the matter of personal employment a contractual equality does not in truth exist.

Nor should the rule be necessarily applied to railway companies alone. It should equally be applied to all corporations which use appliances, vehicles, or machinery which are dangerous to human life, and especially to those which for purposes of gain, invite the public upon their premises. It should be applied to private persons who do likewise. The infliction of injury upon another, should bring with it the duty of at least temporary care, whether the entity who inflicts that injury be corporate or personal. If corporate, there is, of course, an added argument for the rule in authority, if not in logic, and the cases are now quite numerous which, irrespective of charter restrictions or authority, justify a greater police control of corporations than of natural persons. The theory, indeed, which underlies these cases, and which is that without the action of the state the corporation could not have been, or have had any rights at all, and that service to society is an implied condition of every charter, is one which the voting public will readily sanction, and it is the steadily voting public who ultimately control our public and social policies.

The expansion of the law in this respect would be no greater than the expansion of our statute law which has compelled railway companies to fence and to elevate their tracks, or which has compelled them to use spark consumers and has made the mere spreading of the fire from a railway track prima facie evidence of negligence. These are all as it were, risks attendant to the license and the liability is based on the theory that not merely should a public utility serve the public but that losses naturally resulting from the use of a privilege should be borne by the licensee. The railroad company is compelled to fence and guard its turntables against child trespassers, because, on account of the inquisitiveness of childhood, there is no other way to avoid the loss of life. Similarly, no matter how much we may preach and how much we may warn, accidents will happen, and the most careful at times will be careless. Crossing accidents will occur. Does not a due regard for human life demand that the bleeding or wounded man be temporarily ministered to by the agency which clearly occasions the loss? The law for the protection of human life and of the careless as well as of the careful, can demand the elevation of railroad tracks and the incidental expenditure of millions of dollars, and this simply because the railroad is inherently dangerous, and otherwise accidents must occur? Can not the law say that the railroad company, where the track is not elevated, shall at least tem-

(19) Meisenbach v. Cooperage Co., 45 Mo. App. 232; Cent. L. Jour., vol. 70, p. 120.

porarily care for those that are injured? Can not the law say that in cases of accident, such as a sudden sickness upon the highway, or upon a railway train, the nearby physician shall minister even though he may not be absolutely sure of his reward?

Nor should trespassers even be denied some measure of aid and of protection, although it is true that so far the courts have shown but little sympathy towards such persons and have been slow to conceive of any duty of medical help. Except in the cases of young children, where the trespass is through ignorance and a natural curiosity rather than wantonness, and is often the result of a temptation too great to be borne, there can indeed be no reason why the railway company or the manufacturer or the business man should be compelled to bear the loss, any more than the physician himself, or why the former should be compelled to pay, any more than the latter to serve. There is much reason, indeed, for holding that the medical profession is a business which is as much affected with a public interest as is that of the carrier himself. We are also aware that in the case of Wills v. I. and G. N. R. R. Co.,[20] the court, in denying the implied authority of the conductor to employ surgical help, said: "We do not undertake to say what would be the power and duty of a conductor of a railway company where a passenger or employee was injured. Here the party injured was a trespasser and a similar distinction is to be found in a long line of cases." But the distinction and the rule should never, and we believe will never, be allowed to permit of absolute brutality, and the leaving of an injured man to bleed or to freeze to death by the roadside or by the railway track. The first aids to the injured must at least be administered, the person, if possible, must be carried to a place of safety and medical help must be summoned and the public authorities notified. There are points, indeed, beyond which sympathy and humanity submerge all rules of technical rights or technical logic.

It is interesting to note to what an extent the calls of a higher duty and humanity were recognized in the mandates of the Hebrew law and how far behind the ancient Hebrew we moderns often are. It is interesting and suggestive, however, to note that no penalty for, or right of civil action based upon the neglect of these mandates seems to have been provided. Perhaps it would be more in accordance with the fact, to say that these mandates, though contained in the so-called Laws of Moses, were not strictly laws at all, but were mere teachings (torah) or moral precepts. The Hebrew codes seem to have been in this respect loftier in their concept than that of Hammurabi or the laws of the Assyrians, Babylonians or Egyptians from which so much of them was derived, but to have recognized the same difficulty when an attempt was suggested of enforcing the mandates of humanity by the imposition of pains and of penalties. But perhaps no penalties were necessary in a small community and among a small people, such as the Israelites always were, where church and state were so closely co-ordinated and where the disapproval of the priestly class was so dreaded and was fraught with so serious a social consequence. Perhaps even to-day the disapprobation of our friends and of our neighbors may be made more potent for punishment than any pain or penalty or suit for damage that the law may sanction. Even now it is often the disgrace which comes from a conviction in the courts of law which men dread rather than the fine or imprisonment or momentary loss which results therefrom. The cases, indeed, are not uncommon where men have been compelled to leave the communities in which they have lived, because at times of accident by drowning or fire they have hesitated in risking their own lives in order to save those of others. The brand of cowardice is even to-day of far-reaching injury to its wearer. The doctrine, indeed, that "one's first duty is to himself and to his family" and that "self-preservation is the first law," has never met with an unqualified support among a people such as ours whose very civilization is grounded on heroic self-sacrifice.

These Hebrew codes, it is true, say but little about the first aid to the injured as we now use the term. They say much, however, about the duty to the suffering and to the stranger within the gates. The duty of personal aid in the hour of distress, the manly and hospitable nomad and frontiersman takes for granted, and it is only the class selfishness of a crowded civilization which causes it to be forgotten. The care, indeed, which the Hebrew law enjoined concerning the property of the helpless, must have premised a regard for his life also. "If thou meet thine enemy's ox

(20) 41 Tex. Civ. App. 58, 92 S. W. 273.

or ass going astray, thou shalt surely bring it back to him again," the code of torah says.[21] "If thou see the ass of him who hateth thee lying prostrate under its burden, thou shalt in no case leave it in its plight; rather thou shalt, together with him, help it up."[22] "Thou shalt not see thy fellow Israelite's ox or his sheep going astray and withhold thy help from them; thou shalt surely bring them again to thy brother. And if thy fellow Israelite do not live near thee, or if thou do not know him, then thou shalt bring it home to thine house, and it shall be with thee until thy fellow Israelite seek after it; then thou shalt restore it to him again. Thus shalt thou do with his ass, and with his garment, and with every lost thing which belongeth to thy fellow Israelite, which he hath lost and thou hast found; thou mayst not withhold thy help."

Yet the ancient Hebrews were a primitive and a semi-barbarous people. Can the possessors of the newer dispensation afford to quibble and to debate?

ANDREW ALEXANDER BRUCE.
Grand Forks, N. Dak.

(21) Ex. 23, v. 4.
(22) Ex. 23, v. 5.

[Note.—It is with considerable pleasure that we have just learned that Mr. Bruce, the author of the above article, and one of our regular contributing editors, has, on October 30, 1911, been appointed a Justice of the Supreme Court of North Dakota.—Editor.]

SALES—CONDITIONAL SALES.

COLLERD v. TULLY ET AL.

Court of Errors and Appeals of New Jersey. June 19, 1911.

80 Atl. 491.

(Syllabus by the Court.)

Upon a conditional sale, where the goods are delivered to the buyer and the title is retained by the seller as security for unpaid purchase money, the risk of loss is the seller's.

SWAYZE, J. (1) We agree with the result reached by the Vice Chancellor, and with the essential portion of his reasons. His opinion, however, contains some inadvertent expressions which call for remark. He says, in discussing the question whether the horses sold by Brown to Tully were upon a conditional sale: "Some of the horses died after they were delivered to Tully, but this fact was ignored by Brown in his account. He did not by reason thereof lessen his claim against Tully, as he undoubtedly would have and must have done if the sales were conditional and the horses were his and not Tully's." This passage indicates that in the case of a conditional sale, where the goods are delivered to the buyer and the title is retained by the seller as security for unpaid purchase money, the risk of loss is the seller's. The weight of authority is to the contrary. Williston on Sales, sec. 304; American Soda Fountain Company v. Vaughn, 69 N. J. Law, 582, 55 Atl. 54, cited with approval by this court in American Soda Fountain Company v. Stolzenbach, 75 N. J. Law, 721, 724, 68 Atl. 1078, 16 L. R. A. (N. S.) 703, 127 Am. St. Rep. 822. The rule has been embodied in section 22, subd. "a," of the sales act of 1907 (P. L. p. 321).

(2) The Vice Chancellor also says: "The mere fact that she held the judgment would not be a consideration for the mortgage, unless she agreed that upon receiving the mortgage she would be bound in some way with respect to the judgment. Otherwise it would be a nudum pactum. It is argued, that the mortgage was given as collateral security for the payment of the judgment; but, even so, there must be a consideration for the mortgage, and, unless the mortgagee was disadvantaged or the mortgagor was advantaged by the reason of the giving of the chattel mortgage, there was no consideration. There is no proof of disadvantage to the mortgagee, or of advantage to the mortgagor, as a consideration of the mortgage, and no proof of any agreement of any kind by the mortgagee respecting the judgment." This passage from the opinion assumes that, in order to make a chattel mortgage good, there must be a then present consideration when it is given. It has, however, been held by this court that a precedent debt is a good consideration for a chattel mortgage. Muchmore v. Budd, 53 N. J. Law, 369, at page 397, 22 Atl. 518, at page 525. Justice Reed said: "In regard to the objection that there was no consideration for the assignment, little need be said. The point could only have substance when the transfer was regarded as an absolute bill of sale Viewing it either as a mortgage or a trust, all question in respect to the consideration disappears, as the debts intended to be secured were admittedly existing." In the later case of Knowles Loom Works v. Vacher, 57 N. J. Law, 490, 31 Atl. 306, 33 L. R. A. 305, affirmed on Justice Van Syckel's opinion

in 59 N. J Law, 586, 39 Atl. 1114, we not only held that a chattel mortgage given for a pre-existing debt was valid, but also that it was entitled to priority over an antecedent conditional sale not recorded. A distinction is to be made between the validity of a chattel mortgage given for a precedent debt, which is not questioned in our cases, and its right to priority, which might in some cases depend on whether it was required to be for a valuable consideration, as that term is used in some of our registry acts. It is not disputed that one who acquires a mortgage as security for an antecedent debt is not a holder for value. Empire State Trust Co. v. Trustees of William F. Fisher and Company, 67, N. J. Eq. 602, 60 Atl. 940. The complainant in this case does not seek to supplant the judgment creditor. Her liens are prior in time, and she does not need to show that she is a holder for value. All that is necessary is to show a consideration for the chattel mortgage, and the antecedent debt suffices for that purpose. No new consideration is necessary to sustain the validity of these chattel mortgages. It is enough that the parties intended to secure an already existing debt, and it is unnecessary to resort to the theory that there was an implied extension of time for payment, as the Vice Chancellor held in the case of Perkins v. Trinity Realty Company, 69 N. J. Eq. 723, 61 Atl. 167, affirmed 71 N. J. Eq. 304, 71 Atl. 1135.

(3) It is suggested by the appellant that if the second chattel mortgage is void as to Brown, because it fails to state the consideration of the indebtedness which Abraham Collerd assigned to the appellant, it is valid to the extent that it secures the judgment recovered by Winant against Tully and assigned to the appellant. There are two difficulties with this argument. Section 4 of the chattel mortgage act (P. L. 1902, p. 487) makes the chattel mortgage absolutely void as against creditors unless the affidavit is annexed, and the statute makes it obligatory that it should set forth the consideration of the mortgage, not partially, but completely. The affidavit is, however, defective in stating the consideration even so far only as it secures the judgment. We do not agree with the Vice Chancellor that it is sufficient to say that the consideration is a balance of $700, due upon a judgment recovered by Effie C. Winant against John J. Kelly and assigned to appellant. The affidavit ought to show either the origin of the debt upon which the judgment was based or the amount, if anything, paid by the mortgagee for the assignment of the judgment. It is in this respect that the present case differs from Simpson v. Anderson, 75 N. J. Eq. 581, 73 Atl. 493. Mr. Justice Bergen was careful to say in that case: "If it did not appear that the appellant had paid something for the assignment, a different question would arise."

The decree appealed from is affirmed, with costs.

NOTE.—*Liability Upon Note Given for Subject of Conditional Sale, Where Property is Destroyed.* —While the rule is that it is vendor's loss where property is destroyed without fault of vendee in conditional sale, yet this is not carried out to the extent of making an absolute promise to pay fail for want of consideration. It is thought that consideration for such a promise existed in delivery of possession and transference of right to acquire full title. Thus in American Soda Fountain Co. v. Vaughn, *supra*, the holding was, that where the title remains in vendor until purchase price is paid, it is no defence to notes for unpaid instalments, that the subject of sale was destroyed by fire before title passed, if it appears upon construction of the contract that the consideration for the notes was the delivery of the goods with the right to acquire title by payment.

The court said: "The language of the note and order also indicate that the obligation of the defendant was absolute immediately upon the delivery of the goods and was not conditioned in any way upon the passing of the title. The title was retained by the plaintiff merely as security for the unpaid purchase-money. Nothing remained to be done by the plaintiff to perfect title of the defendant; that title would have become perfect immediately upon payment."

In Burnley v. Tufts, 66 Miss. 48, 5 So. 627, 14 Am. St. Rep. 540, the notes contained the stipulation that title to the property, upon purchase of which by conditional sale they were given, should remain with the seller. Upon the property being destroyed it was claimed the consideration had failed. The court said: "Burnley unconditionally and absolutely promised to pay a certain sum for the property the possession of which he received from Tufts. The fact that the property has been destroyed while in his custody and before the time for the payment of the note last due, on payment of which his only right to the legal title of the property would have accrued, does not relieve of payment of the price agreed on. He got exactly what he contracted for, viz.: the possession of the property and the right to acquire an absolute title by the payment of the price. The transaction was something more than an executory conditional sale. The seller had done all that he was to do, except to receive the purchase price; the purchaser had received all that he was to receive as the consideration for his promise to pay."

A good deal of the above is true and some of it is mere assumption from construction. The purchaser had gotten all he was presently to get, but for the amount of the notes, if he paid them, he was to get absolute title. The absolute title was the real consideration of the notes and be-

fore that he was to have possession, and a right which the vendor could not defeat. But the rule seems fairly settled that recovery will be allowed upon an unconditional promise to pay, upon the theory that the consideration of it may not rest upon transfer of title but transfer of possession and the right to acquire title.

In line with this case are Tufts v. Griffin, 107 N. C. 47, 12 S. E. 68, 22 Am. St. Rep. 863, 10 L. R. A. 526, and Tufts v. Wynne, 45 Mo. App. 42, and most probably the very great weight of authority.

In Randle v. Stone & Co., 77 Ga. 501, each note recited that it was "for value received" in a certain engine, and it was unconditional. It was also stated that the condition of delivery of the engine was that title was not to pass "until the note and interest is paid in full," with right of seller to retake possession, if note is not promptly paid.

The engine being destroyed by fire, defendant was held liable by judgment of trial court which judgment was reversed, on the ground that the owner being the one to suffer loss, this principle was only completely applied by destruction causing a failure of consideration for the note.

This case seems squarely against those going before, and the one next following seems in accord with it on principle, though the result was for another reason not allowed.

In Am. Soda Fountain Co. v. Blue, 146 Ala. 682, 40 So. 218, the facts show that defendant pleaded to a suit on ten notes that they were given for the purchase price of a soda fountain and fixtures and by express terms of the notes the title to said fountain and fixtures was to remain in the seller until they were fully paid for and that without fault before the conditions of the notes had been complied with the property had been destroyed by fire, without fault of defendant. Demurrer to the plea was overruled and then there was replication that after execution and delivery of the notes sued on, and for the better securing payment of the notes, defendant gave to plaintiff a mortgage on the fountain and fixtures and it was averred title vested in defendant before the property was destroyed by fire. Demurrers to these replications were sustained and there was verdict for defendant.

The court, in reversing the case, said: "The instrument set out in the replication is a mortgage * * * and was an admission by the parties to the mortgage, that the title to the property was in the mortgagor at the time of the execution of said mortgage and the acceptance of the mortgage by the plaintiff was wholly inconsistent with the theory of defendant that the original sale was a conditional one."

This ruling is not over clear. The court treats the matter as if subsequent to the giving of the notes a mortgage was tendered and accepted, when it may have been, that they were part and parcel of one transaction or it was agred that all should be given before delivery of the subject of sale. It is to be noticed that the replication does not allege, that there was delivery of the property before the delivery of the mortgage, but that the notes were executed and delivered, and not that they were accepted as completing the transaction of sale or conditional sale as the case may be. If the giving of notes and mortgage all preceded completion of the transaction it would seem that at least there was an ambiguity, which would leave the matter open. The court seemed inclined to think the mere giving of the notes still left the title in the vendor. But a mortgage was nothing more than securing them as resting upon a consideration which afterwards failed. C.

CORRESPONDENCE.

CORRECTION.

Editor Central Law Journal:

We observe in this week's issue of the Central Law Journal, being the one of October 27, 1911, Vol. 73, No. 17, on page 294, an article headed "Obiter Dicta—An Accommodating Court's Contribution to the List." In this article you give the Supreme Court of South Dakota rather unflattering credit for having gone out of its way to discuss many questions in the case reported in 132 N. W. at 353. We beg to invite your attention to the fact that this opinion, instead of being written by the Supreme Court of South Dakota, was, as a matter of fact, an opinion of the Supreme Court of North Dakota, and we suggest that you make proper correction of this mistake in the following issue of your journal.

Yours truly,
KELLAR & STANLEY.

Lead City, S. D.

Note.—We thank our correspondents for their attention which enables us to correct an error, that arose from chirography none too legible. —Editor.

HUMOR OF THE LAW.

Judge Coffey of the Probate Department of the Superior Court, of San Francisco, broke a lance recently with two attorneys who were arguing greedily about an allowance of fees.

First Attorney. If your Honor please, to grant such a thing would be the height of injustice; in the common parlance of our mother tongue I call it gall.

Judge Coffey. "All Gaul is divided into three parts," two of which seem to be before the court.

Second Attorney. From the tone of your Honor's remark, one may infer where the third part is.

James Creelman, at a dinner in New York, said of an opponent of civil service:

"If this man had his way he would render our civil service boards as futile as the career of Tom Slack.

"Tom Slack was a lawyer; but I doubt if he had a case a year. One hot afternoon he decided to take a breezy ferry ride, so he put on his door:

"'Back in two hours.'

"On his return he found that someone had written underneath:

"'What for?'"

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Action**—Splitting Causes.—Where one suffers injuries to his person and his property from the same negligent act, two distinct causes of action exist, and a recovery for injury on one cause is not a bar to a subsequent action for injury on the other.—Ochs v. Public Service Ry. Co., N. J., 80 Atl. 495.

2. **Aliens**—Deportation.—Where an alien belonging to the excluded class was arrested, convicted, imprisoned, and ordered deported before he had resided in the United States three years, the fact that such time expired before the expiration of his term of imprisonment did not require the quashing of the deportation warrant thereafter.—Matsumura v. Higgins, C. C. A., 187 Fed. 601.

3. **Alteration of Instruments**—Effect.—An alteration of an instrument by one of several promisors does not affect its validity as against the party making the alteration.—Diamond v. Inter-Ocean Newspaper Co., Okl., 116 Pac. 773.

4. **Attachment**—Burden of Proof.—One suing on a bond given to prevent attachment levy need not show that when the bond was given defendant in attachment had property within the county subject to levy.—Fresno Home Packing Co. v. Hammon, Cal., 116 Pac. 687.

5. **Attorney and Client**—Fees From Fund in Court.—A court of equity may in its discretion make an allowance directly to solicitors for services rendered in a cause which have resulted in bringing a fund into court and with or without formal pleadings.—Colley v. Wolcott, C. C. A., 187 Fed. 595.

6. **Bankruptcy**—Bonded Distillery Receipts.—Under the law of Pennsylvania, a delivery by a distiller of receipts for whisky stored in his distillery warehouse, together with the gauger's certificates, in accordance with the usages of the business, to a purchaser or pledgee, passes title to the whisky, and if made more than four months prior to the bankruptcy of the distiller, such whisky does not pass to his trustee.—Taney v. Penn Nat. Bank of Reading, C. C. A., 187 Fed. 689.

7.——Counsel Fees.—An involuntary bankrupt is not entitled to an allowance for counsel fees and disbursements expended on a contested application to confirm a composition.—In re Fogarty, C. C. A., 187 Fed. 773.

8.——Collateral Attack.—A bankruptcy adjudication and appointment of receiver held not subject to collateral attack in an action on the bankrupt's forthcoming bond.—Moore Bros. v. Cowan, Ala., 55 So. 903.

9.——Estoppel.—Where two of three petitioning creditors in an involuntary bankruptcy proceeding were responsible for the payment of a judgment for the claim of one of them, both were estopped to complain of the paid creditor's withdrawal from the proceedings.—Cummins Grocer Co. v. Talley, C. C. A., 187 Fed. 507.

10.——Fraudulent Conveyances.—On a bill to set aside fraudulent conveyances made by the bankrupt, the trustee represents the interests of the creditors alone.—Cartwright v. West, Ala., 55 So. 917.

11.——Jurisdiction.—Ruling of a state court with reference to the garnishment of dividends after declared cannot affect the administration of an estate in bankruptcy by a federal court.—In re Argonaut Shoe Co., C. C. A., 187 Fed. 784.

12.——Right of Review.—Without either the testimony or a settlement of facts whereon an order of a court of bankruptcy is predicated, the record prevents no question of law which can be reviewed on a petition to revise.—Hegner v. American Trust & Savings Bank, C. C. A., 187 Fed. 599.

13.——Subrogation.—When a broker, prior to his bankruptcy, had pledged to a bank, as collateral to a loan, securities of others in his hands which he had no right to hypothecate, and also others whch he had authority to pledge, the owners of the first class of securities have a superior equity, and may be subrogated to the right of the bankrupt against the owners of the other class.—In re Ennis, C. C. A., 187 Fed. 720.

14. **Banks and Banking**—Collection.—An indorsee bank receiving a check from its insolvent correspondent for collection and credit having paid out nearly all of the proceeds for the benefit of the insolvent held a bona fide purchaser, and not a subagent of indorsing bank.—Amalgamated Sugar Co. v. United States

Nat. Bank of Portland, Or., C. C. A., 187 Fed. 746.

15.——Forged Bill of Lading.—Consignees of cotton under forged bills of lading attached to a valid draft, having paid the same to the collecting bank, held not entitled to recover the amount so paid from the bank as money paid under a mistake of fact.—Springs v. Hanover Nat. Bank of City of New York, 130 N. Y. Supp. 87.

16.——Insolvency.—Where a national bank, after or in contemplation of an act of insolvency, made a transfer of notes to a creditor as a preference, which was void under Rev. St. § 5242, the receiver may at his election maintain an action at law against the creditor for their conversion.—Ball v. German Bank of Carroll County, Iowa, C. C. A., 187 Fed. 750.

17. **Benefit Societies**—Notice of Delinquency.—A member in a fraternal beneficiary association held not to have forfeited his rights against the insurer until notice of his delinquency had been given in the manner provided by the constitution of the insurer.—Haywood v. Grand Lodge of Texas, K. P., Tex., 138 S. W. 1194.

18. **Bills and Notes**—Acceptance.—Under Negotiable Instruments Law, § 112, acceptors of drafts, by their acceptance, admit the existence of the drawers, the genuineness of their signature, and their capacity and authority to draw.—Springs v. Hanover Nat. Bank of City of New York, N. Y. Supp. 87.

19.——Conditional Draft.—A draft containing the provision, "Charge the same to the account of R. S. M. I. 100 bales of cotton," with what purports to be a bill of lading for the cotton, is drawn against the cotton, and is conditional.—Hannay v. Guaranty Trust Co. of New York, C. C., 187 Fed. 686.

20.——Demand.—Under Negotiable Instruments Law, held, that an informal demand on one of two joint makers was not a sufficient basis for charging the indorsers.—State of New York Nat. Bank v. Kennedy, 130 N. Y. Supp. 412.

21.——Notice of Dishonor.—Notice of dishonor of a check on a bank in another state can be given only by notice of its protest.—Mankey v. Hoyt, S. D., 132 N. W. 230.

22.——Purchaser for Value.—A bank discounting a note and merely crediting the payee with the proceeds thereof held not a purchaser for value.—Union Nat. Bank of Columbus, Ohio, v. Mailloux, S. D., 132 N. W. 168.

23. **Brokers**—Option Contracts.—The relation of broker and customer on the purchase of stocks on margin is that of pledgor and pledgee, and not that of debtor and creditor.—Katz v. Nast, C. C. A., 187 Fed. 529.

24. **Carrier of Goods**—Deviation from Route.—Deviation by a carrier from the route described in the contract of shipment makes him liable as an insurer of the goods shipped, though the contract of shipment exempts him from liability under the circumstances under which the goods were lost or damaged.—McKahan v. American Express Co., Mass., 95 N. E. 785.

25. **Carriers of Live Stock**—Shipper Accompanying.—A shipper accompanying a shipment of live stock held required to give notice that the stock must be unloaded.—Westphalen v. Atlantic Northern & Southern Ry. Co., Iowa, 132 N. W. 57.

26. **Carriers of Passengers**—Baggage.—A carrier having received for transportation a salesman's samples as baggage held not entitled to thereafter claim that the articles were not such as it was required to transport as baggage.—St. Louis & S. F. R. Co. v. Lilly, Ala.,

27.——Continuance of Relationship.—The relation of passenger and carrier continues to exist only until the passenger has had reasonable time and opportunity to alight from a train, and to leave the carrier's premises in the ordinary manner.—Alabama City, G. & A. Ry. Co. v. Cox, Ala., 55 So. 909.

28.——Negligence in Ejection.—A conductor who requires a passenger to disembark from the train because of the insufficiency of her ticket and her refusal to pay the fare must know of the perils of the place where he requires the passenger to disembark.—Central of Georgia Ry. Co. v. Bagley, Ala., 55 So. 894.

29.——Rates for Service.—It is as much a matter of public policy that rates established for services by common carriers be not unreasonably low as that they be not unreasonably high.—Sandusky-Portland Cement Co. v. Baltimore & O. R. Co., 187 Fed. 583.

30. **Commerce**—Sufficiency of Complaint.—A letter to the Interstate Commerce Commission setting out the facts on which damages are claimed from a carrier and asking for relief is a sufficient complaint within Interstate Commerce Act.—Dickerson v. Louisville & N. R. Co., C. C., 187 Fed. 874.

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